

CONSERVATION COMMISSION MEETING

Feb. 1, 2016 Amesbury City Hall Auditorium 62 Friend Street
Meeting called to order at 6:40 PM

Present: Steve Langlois, Alan Corey, Kinsey Boehl, Suzanne Egan.

Absent: NONE

Also Present: John Lopez, Agent; Paul Bibaud, Recording Secretary

MINUTES:

Jan. 4, 2016 meeting: Motion to approve by Kinsey Boehl, seconded by Alan Corey. AIF.

Jan. 4, 2016 Executive Session: Motion to approve by Suzanne Egan, seconded by Alan Corey. AIF.

ADMINISTRATIVE :

John Lopez: Request to address ConCom by the Merrimac board of selectman. ConCom is asked to entertain the request. If you think it is appropriate and agree, then a letter can be drafted on behalf of the commission and sent to them, informing that ConCom has agreed to accept their request, and they can appear the commission at the Mar. 7 meeting.

Discussion ensued amongst the commission on this matter. Apparently, they have some questions relevant to the approved management plan and the file. They sent a request for information several months ago. We responded, saying that we had the information and it was free to review, if they wish to come in, if not, we could photocopy the entire folder (at cost). We sent that letter to them, they responded saying they wish to receive the file, but there was no money. We sent a letter back, restating what we had said in the original letter, that the file was free to review, if they wanted to come into our office. If not, we could photocopy (at cost). We factored in photocopying time and staff salary, based upon 30 minutes of work. They responded with a check. We forwarded the file to them, and now they want to appear before ConCom with follow up questions. I point out that this is a valid OoC from 2010. It was not appealed by the dept. nor was it appealed by any resident or ten aggrieved individuals, so it remains valid.

Suzanne Egan: I actually think this provides ConCom with a great opportunity to have the Merrimac Board of Selectmen to come before the commission and to discuss this issue. This has been an issue that has been in the newspaper and there hasn't been direct communication, but this is the opportunity to work on some sort of management plan or to make sure that Amesbury and Merrimac are working together on this issue that effects both municipalities. I would like to invite them to our next meeting. We could provide an agenda to basically discuss their concerns, then to propose next steps in resolving some of the issues.

Steve Langlois: I feel the commission isn't as privy to this situation as the DPW, and I don't want to be here answering questions about something we're not really knowledgeable about. I don't understand how we can do anything without the presence or information from DPW director Rob Desmarais.

John Lopez: That's correct. In a series of articles which appeared in the paper, I feel to a large extent that the ConCom has been incorrectly identified as the applicant by the board of selectmen and by various residents of Merrimac, when in fact the applicant would be protocol requires that

the mayor of the city, through his or her designee, which in this case was DPW director Rob Desmarais, as they manage public lands and public resources at an operational level. So you are correct. Actually, one of the Merrimac residents initially sent a letter to ConCom in Jan. of 2015, with a list of questions. At the time, ConCom entertained that as an administrative item, and voted unanimously to forward that letter to the director of public works for an informed response to each question, which he did.

Steve Langlois: So I ask the ConCom, this isn't really our problem right now.

John Lopez: Would ConCom like an invitation extended to the director of public works?

Suzanne Egan: I'd like to say that, because there is an issue that the Merrimac selectmen are directing the question to ConCom, and they have asked to come to this meeting, some quotes from the newspaper lead people to believe ConCom is hiding something. In the interest of transparency and dialogue, to respond to that invitation to invite them would help to move things forward.

John Lopez: That's correct. Some of the comments were that ConCom is protecting a privileged few individuals where those few individuals I would not define them as privileged. They actually draw their water from Lake Attitash, and need the water level at a certain height or level. The contention by the people of Merrimac, as I understand it, is that the water levels are too high in the lake, and their properties are being flooded.

Kinsey Boehl: If we do invite them, I'd at least like to request that we get some kind of briefing, the same info that they have. Some of us were not on the commission at the time, so what info we have about it is basically nothing.

Steve Langlois: I don't mind entertaining a meeting like that, but I'd like to see the DPW director here for that meeting. We can't go in there naked. He knows what is going on with everything.

John Lopez: So ConCom would like copies of the file for the current OoC, and an invitation extended to both the board of selectmen from Merrimac and the director of public works.

Kinsey Boehl: And a copy of the letter Rob sent to the town of Merrimac.

Steve Langlois: So does ConCom agree to meet with selectmen as long as the DPW director is in attendance, or would you meet without him?

Alan Corey: I think we should meet WITH the director of public works in attendance.

Kinsey Boehl: If you're talking about brining in other stakeholders, what about the people in Amesbury impacted by the wells?

John Lopez: I think all those issues would be addressed if and when the mayor, through DPW, submits a NOI to renew the watershed and waterways management plan. That would be the appropriate forum for public comment.

Steve Langlois: So the ConCom is saying you will agree to meet with the Merrimac selectmen as long as DPW director is present. If he is not present, I will not meet with them. I'm not going to spend 3 weeks studying something that somebody already knows and works for the city.

Motion was made by Suzanne Egan to invite the Merrimac selectmen to come to our Mar. 7 meeting, along with the DPW director. Motion was seconded by Alan Corey. AIF.

DRAFT LETTER OF SUPPORT – CDBG PROGRAM (AMESBURY CONCOM)

John Lopez: The ConCom has in your packets a draft letter of support for the community development block grant program. The town of Salisbury administers this on behalf of the towns of Merrimac and Amesbury. The administrator from Salisbury has requested letters of support. You see a draft letter in your packet that essentially is a boilerplate with the third paragraph

being more specific to this commission to this ConCom and this commission's objective. So I recommend that this be approved and signed by the chair.

Motion of so moved was made by Suzanne Egan and seconded by Alan Corey. AIF.

Draft Management Proposal for Woodsom Farm

This agenda item was requested to be on the agenda by Suzanne Egan.

Suzanne Egan: I asked for this to be placed on the agenda so that ConCom can respond to the public hearing that was held on June 1, 2015, when we had an open public forum on options for the Woodsom Farm. So we also had Mass. Audubon and Essex Count Green Belt comes and discuss the management plan for the grassland birds. At this point I think, it would suggest is that the ConCom to make a request to the mayor and city council that they take the necessary actions to do two things: 1. to implement the grasslands / birds management plan as recommended by Mass. Audubon, and 2. to take the necessary steps to preserve Woodsom Farm for the natural resources for outdoor recreation and also for open space. I'd like that to go before the mayor and council and for them to make the determination as to how best that should occur.

Kinsey Boehl: So we held a meeting in June and the public came out in good numbers to support the initiative and discuss overall management of the property. I think it seemed like a good meeting. As long as some laws weren't changed, the public supported it.

Steve Langlois: I like the sound of this. Not coming on too strong but covering a lot of future issues that we might have down the road. Are we looking to approve the draft land proposal or are we looking to see it and then approve it?

Suzanne Egan: My thought was that we would submit a request to the mayor and council asking them to take those two actions. And along with that, we'd also include the info submitted by Mass. Audubon. That is pretty well vetted and known now what the mowing schedule is, to preserve the nesting birds at that time. The DPW director has been directed to respect that and mow at the farm during those periods. **So my motion would be just to request that the mayor and city council take the necessary actions to preserve Woodsom Farm for open space, outdoor recreation, and the wildlife.**

The ConCom voted on this and approved unanimously.

Unilateral Administrative Order on SOoC (002-0969) 37 Middle Road (MaDEP)

John Lopez: This goes way back to the Amesbury Bylaw on this ten year old project on a project for a six house subdivision. Initially, this was denied, but it was overturned under an appeal. DEP issued a superceding order. ConCom issued a superceding order under the local. There have been many egregious violations on this site throughout the ensuing 5 years. DEP issued the unilateral administrative order, which is basically a Cease and Desist Order. They identified the number of violations that occur and they have instructed the individual (applicant) to remedy those violations. This is presented to the ConCom for your edification, to keep you updated. No action is required at this time. You also have many e-mails in your packet to read.

Enforcement Order (002-0969) 37 Middle Road (Thompson)

John Lopez: This was approx. one year ago, a series of violations were identified pursuant to the superceding order issued by Amesbury ConCom, outstanding of which was the filling in of an isolated vegetated wetland, which is jurisdictional only to the local ordinance, or I should say the local bylaw, and not the wetlands protection act at the state level. ConCom issued a Cease and Desist, requiring a draft management plan be presented. A draft restoration plan was presented,

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and it was approved in June of 2015. It never occurred to me that the applicant would not implement the plan during the 2015 growing season. This amended enforcement order request before you is essentially the same enforcement order, however it requires the implementation of the plan on or before May 27, 2016. It also requires the applicant to submit written notice that they will comply with the amended order. Failure to do so would result in a \$300 fine per day, beginning with May 28, 2016.

Steve Langlois: Are you expecting a response from them before then?

John Lopez: I'm not expecting a response from them ever. So this amended Enforcement Order would require them under law to implement the plan by May 27, 2016. It was an oversight by me in the previous enforcement order not to include an implementation date. It never occurred to me that they wouldn't do it, but I should have known better.

Suzanne Egan: So you don't expect to hear from them ever?

John Lopez: No, ConCom was also forwarded an ad that appeared in the local paper that the applicants have put the property up for sale. The original asking price was \$650,000. On Jan. 28, they dropped the price down by \$20K. So they are itching to sell the property. I think unless we provide a date specific, where they have to implement the plan, I don't expect that they would. ConCom may want to consider recording the enforcement order on the deed, which would halt any sale until it is satisfied.

Suzanne Egan: I would suggest that that is appropriate.

John Lopez: It should also be noted in the motion that the applicants have filed for an adjudicatory hearing. They are appealing DEP's UAO. You will also note that the presiding officer has responded and has remanded the adjudicatory request back to the applicant for a number of deficiencies in their request.

Motion was made by Suzanne Egan to amend the enforcement order imposed on 37 Middle Road to include fines of up to \$300 a day if the plan is not implemented by May 27, 2016, and that this enforcement order will be recorded at the Registry of Deeds. Motion was seconded by Kinsey Boehl. AIF.

CONTINUED BUSINESS:

NOI (002-1136) 77 Elm Street (Martin)

John Lopez: This is a NOI for the proposed conversion of an existing Mill Building into commercial and retail space. This would include sidewalks, handicap access ramps, and the redevelopment of an existing parking lot. This is within the buffer zone to a perennial stream which is identified as a river under the wetlands protection act and the Amesbury Ordinance.

Brian Couture, registered landscape architect and civil engineer: I am here tonight representing the property owner and developer, David Martin, LLC, who is here tonight. The building is on the corner of Clark and Elm Street. The back river flows from Clark's Pond under the mill building through a culvert that is over 200 feet long. Thereby the riverfront area is perpendicular to the culvert at the upstream portion of the project. Sixty three square feet of the building is within the 100 foot buffer. Proposed improvements on the site are the redevelopment of the mill itself. Any work on the exterior would be within the 100 feet of the wetland buffer, but we're also proposing a new parking lot on the neighboring lot #139, and that is a 19 space parking lot that would have additional storm water management to treat both the increase in the pervious cover but also the first flush of storm water runoff, keeping in line with the Mass. Storm

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Water Management Standards. Bio-retention will be at both corners to treat the water and bend it into the underground recharge chambers that would hold the water and detain it to match the pre and post runoff. The impervious cover on the existing mill lot would be reduced by approx. 10%. We are proposing landscape improvements within the courtyard area and then some parking on what we're calling Fruit Place Extension. Although this is treated sort of as a public road, all the way through the property owners' rear of his property, there are easements currently that have been granted between property owners and the town maintains drainage through that easement. As part of this project, that easement will be formalized as it has been requested by the PLB as a formal easement being recorded and then drainage improvements will continue to be maintained. Our storm water management strategy would be to tie into that existing drainage system that eventually runs down and ties into Clark Street, then discharges into the Back River. The southeastern portion of Lot 38 is located within zone A for flood plain, and Lot 139 in the western portion of Lot 38 (mill property zone X outside of the flood zone) based on FEMA maps. The total area of disturbance for the entire project is just a little over 30,000 square feet. We are proposing within the 100 foot buffer zone where it is 1464 square feet, that would include the exterior building façade improvements only. We'd be providing erosion control protection, protecting any sediments entering the existing drainage structures during construction. We're also proposing landscape improvements throughout the project.

Alan Corey: You said it was in Zone A of the FEMA flood maps?

Brian Couture: Yes, a portion of the existing mill building.

Alan Corey: Is this more than a 50% reconstruction?

Brian Couture: It would be more than 50%.

Alan Corey: Then you must follow the rules of Zone A FEMA Flood Plains.

Brian Couture: They have been working under those guidelines.

Alan Corey: I haven't looked into it, but it may include raising the building above the base flood level etc. etc.

Brian Couture: I don't have the base flood level elevations of the building, but obviously we'd be looking into that.

Suzanne Egan: John, would you recommend that this go out for a third party review or is this being vetted enough Between the DPW director and yourself?

John Lopez: Bo, I recommend this be a third party review. The PLB has retained Stantec as their consultant, and we've actually been in consultation with Mr. Couture on this. We are doing a peer review under the auspices of the jurisdiction of the PLB. I recommend the same, Stantec peer review, pursuant to the Wetlands Protection Act, the Amesbury Wetlands Ordinance, and the Mass. Storm Water Standards. So if the ConCom supports that, when would you like this continued? Mar. 7 will be here very soon. We already have a lot of agenda items continued to Mar. 7. The following meeting would be April 4.

Brian Couture: We'd like to go for Mar. 7.

Motion was made by Suzanne Egan that Stantec be retained to provide a third party review on this project and that the agent be delegated with authorizing that contract with Stantec. This review would be pursuant to the Wetlands protection Act , Amesbury Wetlands Ordinance, and the Mass. Storm Water Standards, as well as the FEMA Flood Plain Elevation, and to continue this hearing to Mar. 7. Motion was seconded by Alan Corey. AIF.

NEW BUSINESS :

RCoC (002-1134) 44 R Elm Street (Hardy)

John Lopez: This is a project which came to the ConCom through an Emergency Cert. for a failed septic system. This was within a river front area. The emergency cert was issued, which disconnected the failed system, and allowed the property owner to tie into the city sewer line. The project was implemented in an existing parking lot. Nothing new was disturbed. The emergency cert required the applicant to submit an NOI. Order of conditions was approved and issued. The project was done pursuant to the submitted plan. There are no outstanding issues and at this time, the applicant is requesting to close out the project. I recommend a certificate of compliance be issued for 002-1134.

Motion was made by Kinsey Boehl to issue a Certificate of Compliance to 002-1134, 44R Elm Street. Motion was seconded by Alan Corey. AIF.

Request for Amended Order of Conditions (002-0146)

Whittier Bridge 195 Improvement Project (MassDOT)

John Lopez: This is a request for I believe amendment #3 for the Whittier Bridge. The applicant is proposing to modify the approved method of demolition to that of using explosives.

Jessica Kenney, MassDOT: We want to, if possible, to separate out the work behind the north abutment that won't be in the water. It is just within the riverfront area and the buffer zone vs. the work in water. So we're hoping to talk about that first, then after talk about the work in water, so we can keep them separate.

Ernie Monroe, resident engineer for MassDOT on this project: The design build team is looking at alternative ways to 1. do some demolition in the river, and 2. the new northbound abutment of the southbound bridge is on top of bedrock and we need to split that bedrock and get it out of our way, probably as early as March of this year. That holds the existing southbound bridge, the northern location that is outside of the water itself but inside the riverfront. We'd like to address that as the first issue. It's not demolition at all. All it is is removing existing ledge that we have to tie into for the new seismic evaluation that needs to go on for the bridge. We did the northbound side which took lots of time and was very loud. So this is a way of mitigating time and noise reduction for the neighborhoods.

John Lopez: So was this phase included in your request for an amended order?

Ernie Monroe: Yes. We just want to separate them out, because they are two different issues. The other issue is actual excavation of the existing piers, 3 and 4, that are in the river, and our form of excavation for the river work is taking down the existing piers that are granite, which we've offered to all the communities that want them, and the area below the high water table, we want to split that by using explosives, so it is a lot easier for us to clean up in the river.

John Lopez: The idea of separating things out is difficult. The easiest answer is to submit a separate notice of intent.

Steve Langlois: Also, just so we know where we're going from here, the abutments, when you say the north abutment, that needs to be identified a little bit more so we know what you are talking about. The abutment closest to the bank, that is the existing north abutment?

Ernie Monroe: Yes. That is the existing north abutment, which is part of the existing NOI and is being demolished, made of concrete.

John Lopez: The noise to residents is certainly appreciated but is beyond the scope of this commission's review. The demolition was proposed about two years ago on the entire old bridge and much more extensive than what is being planned now. But the DEP representative was rather

emphatic. I remember him saying “your schedule is not my concern.” So I bring it to ConCom’s attention to keep in mind.

Kinsey Boehl: So did you have to do similar to the northbound side in, did you have to get the ledge?

Ernie Monroe: Answer was muffled due to everyone in a half circle directly in front of the ConCom seated at the dais with no one close to a microphone. This discussion carried on for several minutes, little to none of it audible.

Mike from McCourt Construction: As we’ve alluded to, this is not massive explosions like a cartoon. No dramatic effects. This is small, controlled explosions that are meant to fracture the rock ledge for removal. That allows us to go in after the blast with small, traditional excavators and remove the broken pieces of rock. For highway rock excavations on DOT projects, normally it is a contractor’s means and methods as to how they will go about removing rock that is encountered in the progress of work. Over the course of this project, we encounter lessons learned as to what types of things we may find and how best to meet the challenges presented. This is no different than any other project. We fall back onto ways to improve using past experiences and methods of construction. On DOT projects when rock is encountered, this is a very traditional means of excavation when there are decent quantities that need to be removed. So for the proposed rock excavation, which again is within the riverfront and just crossing the line of the 100 foot wetland buffer. We also have a drainage area which was the drainage swale and the final median condition for water quality improvements as well as to facilitate installation of drainage pipes and drainage structures. On this plan before you, there is a 250 foot radius showing around that, the purpose for it being what is required for the permitting aspect of any blasting within the state of Massachusetts. So within that 250 feet, our blasting professional will conduct a pre-blast survey to any structures within that radius (structures meaning catch basins, manholes, and drainage pipes connecting the network). They will then set up seismographs at strategic locations and then will perform a test blast, which will verify their calculations with the type of rock that is encountered in this area. They could then go back in and massage their calculations if necessary, but it is rather straightforward, following industry standards and state and MassDOT specifications for the work.

A long discussion trying to clarify and simplify this very confusing process ConCom seems to be embroiled in over this project. Very confusing and needed at least 30 minutes of untangling misconstrued information. ConCom wanted to have a reviewer to oversee the whole project of ConCom. Jessica, speaking for MassDOT, feels that would be redundant since they are already paying two groups to oversee, but if that is what ConCom wants, then Jessica will bring it up again to DOT.

John Lopez: Now we are going to hear the second part of tonight’s agenda item.

Ed Baldovin, Walsh Construction: I will talk about the water piers. There are four piers in the river. Two of the piers (3+4) are in Amesbury, which is why we are here tonight to consult with you in regards to these two Amesbury piers. Before we do anything with these piers, we take them all the way down to the water level of just above high water. We then bring in a driller again, who will drill into the piers, and when done, he will load the explosives and put pack in these holes. Before that, we’ll have a silt curtain around everything, obviously. There will also be a bubble curtain around this as well. The bubble will be turned on ahead of time. When ready, we’ll take all the usual precautions and we’ll blast from water level down. The water absorbs a

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lot of the blast. That will be talked about soon. That's about it. There are two piers out there, and we'd like to blast both using explosives.

The Bubble Curtain has been used for 40 years. It helps contain the blast. As for fish, it frightens some away, but it also attracts some to it. The distances, etc. it covers is well documented. A scare charge, a small explosion, is used just prior to setting off the Bubble Curtain explosion. Without the bubble curtain, to 60 feet, there is 100% mortality rate. With the bubble curtain, there is 0% mortality within 60 feet. We have to be done with blasting for the sake of the fish by April 1.

Jessica Kenney: I will put together a letter that, as you've agreed, the NOI and the othe4r part needs to be amended. I would propose that to the ConCom and that ConCom would have to accept. So I will put together a letter that talks about the changes and proposals to meet the changes, and a plan change request to ConCom.

Kinsey Boehl: So the request for amended Order of Conditions is going to be changed with the piers 3 + 4 completely removed, and the embedment left in. Then piers 3+4 will come back as its own NOI.

Motion was made by Kinsey Boehl to continue this to the March 7 meeting. Motion was seconded by Alan Corey. AIF.

Motion to adjourn was made by Kinsey Boehl and seconded by Suzanne Egan. AIF.

Meeting adjourned at 9:00 PM.

Transcribed by Paul Bibaud